

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HOWARD KAPLAN,)
Plaintiff,) CIVIL ACTION NO. 04-10856MEL
v.)
WEND MANAGEMENT, INC.,)
WENDY'S OLD FASHIONED)
HAMBURGERS OF NEW YORK,)
Defendants.)

)

**DEFENDANTS' MOTION TO DISMISS COUNT II OF PLAINTIFF'S
COMPLAINT PURSUANT TO FED. R. CIV. P. 12(B)(6)**

Defendants Wend Management, Inc. and Wendy's Old Fashioned Hamburgers of New York ("Defendants") hereby move this Court to Dismiss Count II of the above captioned action, which alleges a violation of M.G.L. c. 272, § 98, on the grounds that Plaintiff, Howard Kaplan, fails to state a claim upon which relief can be granted. Defendants assert that, under Massachusetts law, they are not liable for the acts which Plaintiff alleges violate M.G.L. c. 272, § 98 and, therefore, Count II should be dismissed as to both of them.

The grounds for Defendant's motion are more fully set forth in the accompanying Memorandum Of Law In Support Of Defendants' Motion to Dismiss Count II of Plaintiff's Complaint Pursuant to Fed. R. Civ. P. 12(B)(6).

REQUEST FOR HEARING

Defendants request a hearing on this Motion.

WEND MANAGEMENT, INC. and
WENDY'S OLD FASHIONED
HAMBURGERS OF NEW YORK,

By their attorneys,

/s/ Gary M. Feldman

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